THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.3508 of 2006

Dated:26.12.2006

Between
Vemuri Venkata Subba Rao

.....Petitioner

and

1.The District Collector,
Prakasam District, Ongole
And others.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.3508 of 2006

ORDER:

This writ petition is filed seeking a Mandamus to declare the proceedings in Rc.CS/3830/2005, dated 2.2.2006 issued by the 1st respondent-District Collector, Prakasam District, Ongole as arbitrary and illegal.

It appears that the petitioner was the fair price shop dealer of Kolachanakota Village, Maddipadu Mandal, Prakasam District. While so, his authorization was cancelled by the 3rd respondent-Revenue Divisional Officer, Ongole *vide* proceedings dated 5.5.2005. Aggrieved by the same, the petitioner carried the matter in appeal before the 2nd respondent-Joint Collector, Prakasam District, Ongole. However, the 2nd respondent after perusal of the material placed

before him allowed the appeal holding that “the charges levelled against the petitioner are not so serious in nature and according to charge 5 (4) of the Andhra Pradesh State Public Distribution System (Control) Order, 2001, the cancellation of authorization in spite of submitting explanation to show cause notice amounts to substantive penalty. The period of suspension be treated as substantive penalty.” Aggrieved by the same, the petitioner carried the matter in revision before the 1st respondent-District Collector, Prakasam District, Ongole. The 1st respondent after perusing the entire material available on record came to the conclusion that the petitioner/fair price shop dealer has failed to produce rice coupons as per rules for 81 kgs which is more than 1% variation allowed to the dealer. The petitioner was also found with 76 liters of kerosene oil coupons excess than the audit sales when the stocks were verified. It clearly shows that the dealer is not maintaining true and correct accounts. The card holders 12 in number gave statements that the petitioner/dealer is selling

at higher rates viz., rice @ Rs.5.50 ps, per kg., and kerosene @ Rs.10-00, than fixed by the Government. Therefore, the 1st respondent set aside the order passed by the 2nd respondent-Joint Collector and directed the 3rd respondent-Revenue Divisional Officer to notify the vacancy as per rules and take action for filling up the vacancy. Aggrieved thereby, the present writ petition is filed.

In spite of service of notice, none appears nor there is any representation on behalf of the 4th respondent.

According to the learned counsel for the petitioner, the 4th respondent is not a card holder and he has no locus standi, firstly to question the order passed by the 2nd respondent-Joint Collector. Secondly, the 2nd respondent after an elaborate consideration of the matter came to the conclusion that the charges are not so serious in nature and the very suspension period shall be treated as substantive penalty. In spite of this, the 1st respondent-District Collector has intervened and set

aside the order passed by the 2nd respondent and therefore, the same is arbitrary and illegal.

Learned Government Pleader opposed the stand taken by the learned counsel for the petitioner and strenuously contended that since there was variation in rice as well as kerosene coupons, the 1st respondent rightly allowed the appeal and ordered re-notifying the vacancy.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

In the order passed by the 3rd respondent, certain irregularities committed by the petitioner were enumerated as under:

1) *that the dealer running provisions shop parallel and it is contrary to PDS Act.*
2) *That the dealer failed to produce rice coupons for 81 kgs and having irregularly K.Oil coupons for 76 liters and it is revealed that the dealer has not maintained proper accounts.*
3) *That the dealer is selling Ecs at higher*

rates ie., Rice is Rs.5.50 and K.Oil is Rs.10-00 instead of prices fixed by the Government.

4) *That the dealer is distributing the Ecs with less weighment i.e., every 20 kg rice the card holder receives only 17 kgs and K.Oil ¾ liter to every one liter.*
5) *That the dealer misused 2-04 qtls of rice without giving to the card holder.*
6) *That the dealer is not distributing the Ecs properly.*

The petitioner submitted a detailed explanation for the said charges. In his explanation, he submitted that the allegation with regard to the distribution of rice to coupons is very vague and not specific about the month and year and as such, it is invented for the purpose of implicating him. However, the finding recorded by the 3rd respondent-Revenue Divisional Officer, shows that there was shortage of 8 1 kgs of rice and 76 liters of kerosene oil in excess. But, it does not refer to any month or date. It seems that the Mandal Revenue Officer has submitted a report basing on the representation submitted by one Kavala Srinivasarao, Chennupalli

Venkataramana and others of Kolachanakota Village, and recommended for cancellation of authorization held by the petitioner. Except this, no enquiry as such has been conducted. Even assuming that, there was a variation of 81 kgs of rice in short and 76 litres of kerosene oil in excess, the details are never furnished to the petitioner, so that, he could explain the same. The 2nd respondent-Joint Collector has rightly held that the charges are not so serious and the period of suspension could be treated as substantive penalty. But, the 1st respondent-District Collector allowed the revision holding that as many as 12 card holders gave statement. In whose presence these 12 card holders were examined and whether the petitioner was permitted to cross examine them or not is not known. Such information was not furnished to him at any point of time. Further, since no enquiry was conducted, the findings recorded by the District Collector, cannot be said to be correct. Under these circumstances, I am of the opinion that the impugned order passed by the 1st

respondent-District Collector is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order passed by the 1st respondent is set aside and the order passed by the Joint Collector is upheld.

The writ petition is allowed accordingly. No costs.

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26-12-2006

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